

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
JULY 23, 2008**

CALL TO ORDER

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Gene Dziza, Gordon Cross, Jim Heim, Rita Hall, Randy Toavs and Marc Pitman. Marie Hickey-AuClaire, Mike Mower and Frank De Kort had excused absences. BJ Grieve, Andrew Hagemeyer and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were approximately 11 people in the audience.

**APPROVAL OF
MINUTES**

Dziza made a motion seconded by Toavs to approve the June 18, 2008 meeting minutes.

The motion was carried by quorum.

**PUBLIC
COMMENT
(not related to
agenda items)**

Pat Arnone, 595 Lauman Road, stated that in the growth policy and the subdivision regulations it specifies ground water depth of eight feet or less that a lot should not be any smaller than five acres. She asked the planning board to adhere to that and not have a hodge-podge with some requests they ignore and some requests they pay attention to it. That way, the people that are wanting to subdivide lands will know what the rules and regulations are and that the planning board is going to follow it for everything and not just for a few. She saw it ignored on a subdivision out in her area because there was open space near it and the five lots that had the shallow ground depth did not have to adhere to the five acres, they were 2 ½ and 3 ½ acres instead of the five. For the sake of the clean water she asked the board to please pay attention to what is in the subdivision regulations and the growth policy.

**WHITETAIL
PINES
SUBDIVISION
(FPP-08-09)**

A request by Sundance Properties Inc. for Preliminary Plat approval of Whitetail Pines, a 45 lot single-family residential subdivision on 180 acres. Lots in the subdivision are proposed to have individual water and septic systems. The property is located at 2783 Columbia Falls Stage.

STAFF REPORT

BJ Grieve reviewed Staff Report FPP-08-09 for the Board.

The public comment portion had been closed for this agenda item at the June 18, 2008 public hearing.

Toavs and Pitman had to recues themselves for this proposal and therefore the board did not have a quorum. This item was re-scheduled for the August 13, 2008 meeting.

**SHUPERT/
THORNBERRY
ZONE CHANGE
(FZC-08-06)**

A Zone Change request in the Blanchard Lake Zoning District by Joseph & Raymond Shupert, and Ronald & Esther Thornberry from AG-40 (Agricultural) to SAG-10 (Suburban Agricultural). The properties are located at 415 and 500 Twin Bridges and contain approximately 170.42 acres.

STAFF REPORT

Andrew Hagemeyer reviewed Staff Report FZC 08-06 for the Board.

**BOARD
QUESTIONS**

Dziza asked when the Blanchard Lake Zoning District had been created.

Hall stated it was in the staff report on page 12. It was created in 1993.

Dziza asked about the parcels just to the south of the subject property and what they were zoned.

Hagemeyer said they were 20 acre parcels. He found there were a number of parcels that were 10 acres or less along KM Ranch Road.

Hall had a comment regarding the state lands. She knew the state had various thoughts back and forth regarding some of the land in the Spencer Lake area. There had been quite a bit of discussion historically regarding selling it or maximizing it because the focus was not around logging anymore. Since this district creation, and the request from the state that dates back to 1993, she didn't feel it was any longer relevant. If you go back to the original reasons it is no longer relevant. So Hagemeyer's second point regarding the character of the district, the state of Montana and the state trust lands, she felt it was no longer a pertinent factor.

Hagemeyer stated they do have a neighborhood plan for the state lands in these areas. He looked at it and they are planning on retaining the property in this area. It is meant to be an active and passive recreation and is silviculture.

Cross asked if there were anything in there regarding residential neighborhoods nearby. Did he get any guidance from the neighborhood plan?

Hagemeyer said no, not in terms of neighboring properties. He pointed out he did receive one comment letter from a neighbor and he read it for the board. He stated that their comment wasn't really for or against the proposal but they do not want this area to become suburban in nature. They are worried about their property taxes increasing and they are worried about a housing development going in next door.

Cross commented that staff had not done any discussion regarding a PUD overlay.

Hagemeier said he thought they would have to come in for an additional zone change with a PUD. He didn't think they were eligible for a PUD without coming in again for public review. He didn't include it because it seems to cause confusion.

Harris stated approval of a PUD is a hard zoned district for that particular site. There is a two step process.

Cross stated it is a zoning overlay so under a SAG-10 they could double the density with a successful PUD.

Harris said that is correct.

Cross asked about access to the property that is north of the river. There was no discussion of that and it looked to him that potentially they might have to access north to Highway 93.

Hagemeier stated he could not get on that portion of the property and he does not know how it is accessed.

APPLICANT PRESENTATION

Erica Wirtala, Sands Surveying Inc., represented the applicants. She stated there are seven parcels within this application. She agreed with the staff report but wanted to clarify some things and expand a little on the Blanchard Lake Zoning District. It was created in 1993 and since that time, there have been many alterations within the Blanchard Lake Zoning District. It is a very large district that goes all the way out to Highway 93. The larger AG zones actually cross Highway 93. The zone is expansive and she referenced several zone changes within the district. We are looking at AG-40 and even a few AG-80 districts that are scattered throughout the county being broken down into smaller districts so people are given some real estate management options. The Shupert's have their home for sale on a 38 acre parcel and if they were able to offer a buyer the home and ten acres surrounding the property it would become a little bit more marketable. Part of the property does straddle the river and if the opportunity was given to be able to shift some boundary lines around and move some things they might have better access to that property and utilize it in a more efficient manner. They are adjacent to the newly created Tally-Bissel Zoning District, those are ten acre parcels. When you look at the overall character of the area, this proposal is not out of character and the state statutes look at the character of the district when determining if a proposal meets the criteria. She pointed out that SAG-5 does allow a PUD that would allow a 50 percent density. Hagemeier was correct in stating an applicant would have to ask for PUD overlay and preliminary plat which is a big process.

Raymond Shupert, 500 Twin Bridges, said the property to the north has a 60-foot county right-of-way that runs through the property with an access off of Highway 93.

Joseph Shupert stated that neither he nor his brother are married or has children. If either one of them wanted to leave a piece of property even to a brother they would have to leave them 40 acres. Who in their right mind would do that? Ten acres is more reasonable. We are not out to ruin the neighborhood, that's our retirement. We worked for that and kept it for 40 years. We didn't even know we were zoned. Back then we didn't have any money to do anything. It's hard to get things changed. Even if we got married, which I doubt I'll do, then we could always leave ten acres to a child. I doubt I'd do that either.

Ron Thornberry, 415 Twin Bridges, stated his wife and he have lived there 30+ years. Their children attended Bissell School. We've been good neighbors to a lot of people around there for a long time. He said the only reason he came tonight was because there was some literature circulated saying they were not good neighbors because they were proposing a zone change. It's not our intention to develop anything. On the same pretense that we might have children that would want a piece of property; I wouldn't give it to them, they would have to work for it and buy it. They might not pay as much as somebody else but the point being property should be available to his family members on a reduced basis. This seems to be the only way we can do something like that. The property is way out-priced as agricultural value and you couldn't grow anything out there that was legal that would help pay for that ground. He reiterated they had been good neighbors for a lot of years and it upset him that people were saying they were not.

**BOARD
QUESTIONS**

None.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENTS**

Dale Gallis, 5265 Farm to Market, was concerned that they start subdividing. He stated he doesn't want any zoning on his property whatsoever. It concerns him what could happen in the future. If they want zoning on their own property that stays on their property go ahead. If it affects me I might be upset about it. I'm against zoning on my own property whatsoever.

Amy Williams, lives on Lodgepole which has been re-named to Camp Trail, said the Thornberry's are incredible neighbors and have been very generous to the community. It's hard to be here on the opposite side of the fence but they are fantastic neighbors. She said she doesn't understand how zoning can be zoned; we moved somewhere because of the zoning and then it arbitrarily changes. We moved out there because it was country. She pointed out some properties on a map and told of how they went from being 40-acre parcels to 20-acre parcels through boundary adjustments. People can do boundary adjustments and zoning changes. What about the people that moved

there because they were zoned AG-40? She pointed out where she lives on 20-acres and although she appreciates them wanting to do this zone change, and understands, she doesn't have to like it. Where will it stop?

Nancy Philben, 2450 KM Ranch Road, agreed with the previous speaker regarding the Thornberry's being great neighbors. She said she respected the fact that they have the right to do what they like with their property. She was concerned about the impacts the traffic would have and the noise from potentially 34 possible home sites, a minimum of 17. That's greater than the whole section of the neighborhood and that's a huge impact. This will affect traffic and the environment. Environments are very sensitive and she thought that would be a heavy load. The sound buffer and the quality of the neighborhood would be greatly affected. She stated she wouldn't be here if they were asking for 20-acre parcels but what they are proposing is just hard to swallow.

Bonnie Hodges, 2290 Km Ranch Road, stated she is not directly impacted but she is concerned about traffic flow on a road that the speed limit is 45 mph which is a hazard. She was also concerned, not what the applicants are doing, but what the others with parcels with out of state interest might do. She was also concerned about the environmental impacts and agreed with the two previous speakers stating they understand why they are proposing this but please stop the action before it starts.

APPLICANT REBUTTAL

Wirtala wanted to address some of the issues brought up during public comment. She wanted to reassure the gentleman that there was no zoning being proposed on his property. This would just be on the Shupert's and the Thornberry's properties. She pointed out that people that apply for a zone change take a risk and it goes under a lot of scrutiny. It goes before the planning board, a land use advisory committee if there is one for that specific area and then on to the county commissioners. There are two public hearings. The applicants know there is a risk and it is up to each individual landowner to weigh the risk with their personal property and whether or not they are interested in pursuing that and whether or not they can make a case to those governing bodies. They have to meet the 12 criteria or be reviewed favorably under those 12 criteria to apply for zone change. When people state concerns that 'there goes the neighborhood' and everybody else is going to pile on in there; that is each individuals right to be able to do that. They are going to have to assess their property and where it stands in that zoning district. As far as boundary line adjustments and family transfers, those all have to conform to zoning. If there were some type of exemption used, it had to have happened before 1993 when the larger AG zoning districts were set down. Otherwise, she didn't know how they would have done it. Those are carefully reviewed during a 509 review, any proposal that you bring through on a certificate of survey, whether it's a boundary line

adjustment or a family transfer, has to conform to zoning. She didn't see how they could skirt the law but perhaps they did that pre-1993.

**STAFF
REBUTTAL**

None.

**MOTION TO
ADOPT F.O.F**

Dziza made a motion seconded by Hall to adopt Staff Report FZC-08-06 as findings-of-fact.

**BOARD
DISCUSSION**

Cross asked if they had done some re-zoning in this district further down on KM Ranch Road. He asked how close, in this district, is the nearest SAG-10?

Hagemeier pointed out on the map that SAG-20 was approximately two miles away. We are looking at three miles to the nearest SAG-10 within this district.

Cross asked about the diagonal presence of the Tally-Bissell Zoning District' which is all SAG-10; from a planning perspective how does that weigh on staff's analysis of this zone change. It's clearly not this district, but it's hard to say it's not in the area.

Hagemeier said he considered it in the general character of the area. Although, the general character of the area is not part of the 12 statutory criteria. Nonetheless, he made a note of it.

Harris said that's how he would look at it as well. Even though it's in a different district it is in proximity to their request.

Hagemeier said he should have done a review of spot zoning in his staff report, he found that it did not meet the criteria for spot zoning. He might have paid more attention to the area adjacent being un-zoned more than the SAG-10, but it definitely doesn't seem to be spot zoning.

Heim commented he is somewhat sympathetic towards the person that stated they move there because it was zoned AG40. Yet the valley is growing and we have to make room for people somewhere. He felt the subject property was adjacent to a SAG-10 neighborhood so he was torn. He hears both sides and if there are no health and welfare issues; the roads are always brought up as an issue, but you always get the density before you get the road fixed.

Hall commented that the property being zoned without the family's knowledge and being in the family forever was odd. The land on the other side of river has no access, and the property has been on the market for a long time and hasn't sold. It's out there in the high rent district, but to try to generate an income from the land you won't be able to raise anything that's legally accepted. Because of the close proximity to SAG-10, the request they are presenting is not out of line at all. You've got a good egress and a good water source and the points

all seem to be in favor. The issue with the state lands doesn't even seem to be relevant. For one thing the state lands people didn't even respond to an agency referral so it's obviously not a pertinent matter in their minds.

Toavs commented you have to request something in order to get any improvements, but where Twin Bridges Road meets Highway 93 that is an awful intersection. That was really the only concern he had was if they start busting up this area out there, most of the traffic would go to Whitefish which is a right hand turn. He reiterated that he didn't know if it's ready to be busted up out there or not.

Pitman agreed and stated when he worked for the county he tried to get that road on the safety improvements program through the state. He was actually involved in the reconstruction of Lodgepole. He worked with Mr. Thornberry, he gave them a right-of-way; yes, he is a good neighbor and helped out years ago to rebuild the road. He was not so certain this would increase the density because the majority of that property is on the other side of the river. They will have to get some type of access across the river. This is a tough one because he understands people move to the Flathead Valley because they like it and they don't want to see it grow. But they are the one's that keep moving in. He see's the SAG-10 next door to it and he also see's a large chunk for logging trucks that used to use it; that is one reason why they rebuilt the road in 1992. A lot of the traffic has lightened up. He doesn't see a lot more traffic with this zone change.

**ROLL CALL TO
ADOPT F.O.F**

On a roll call vote the motion passed unanimously. (6-0)

**MOTION TO
APPROVE**

Dziza made a motion seconded by Hall to adopt Staff Report FZC-08-06 and recommended approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Dziza commented this was a tough one for him and he appreciated the ladies comments regarding buying property due to the larger size zones. On the other hand, the board is used to seeing a lot more neighborhood opposition. He was curious to see what kind of opposition they would hear from the neighbors. We all struggle with these and wonder of we are going to see zone changes come flooding in. That's a concern too. He felt staff did a good job with staff report and it's just one of those things when they have to say why not, there is no reason to recommend denial. He doesn't see this proposal making a huge change to the character and if someone came in for a subdivision the board would get to review it. He said he is okay with this proposal.

Cross commented that he was pretty sensitive to the character of the neighborhoods. He had no doubt that once they've done this they would have broken the integrity it has with the AG-40 in the area. If you look at the map there is an awful lot that isn't necessarily going to change. The state is committed to running those school lands and he

thought that was kind of the safety valve out there. Clearly the people that have under 20-acres, if they are so inclined, may want to take advantage of this as a precedent. But by and large the big chunks will stay big chunks. Regardless of the 12 criteria the question in his mind was whether or not this was appropriate for this zone in this area; it's near an intersection, it's got the various points and at some point in time if there were more people out there this is where you would think there would be the most intense use out there where the roads come together. Then you have the stuff on the north that would actually access completely different which would not increase traffic on either KM/Twin Bridges junction or the Twin Bridges/Highway 93 junction. Both of which he agreed could be improved. He guessed he would reluctantly support this proposal but he would be a lot happier if it was AG-20; but that's not the proposal that is in front of the board. He didn't think he would support it if it wasn't geographically where it was.

**ROLL CALL TO
APPROVAL**

On a roll call vote the motion passed unanimously. (6-0)

**CUFFE ZONE
CHANGE
(FZC-08-03)**

A Zone Change request in the Southeast Rural Whitefish Zoning District by Lannette and Mitchell Cuffe from AG-20 (Agricultural) to SAG-5 (Suburban Agricultural). The property is located at 4546 Trumble Creek Road and contains approximately 38 acres.

STAFF REPORT

Andrew Hagemeyer reviewed Staff Report FZC-08-03 for the Board.

**BOARD
QUESTIONS**

Toavs stated they could still do a family transfer due to the size of the lots.

Hagemeyer said they cannot do a family transfer as it stands. They cannot create a new parcel as it stands right now. If they went to SAG-5 he wasn't sure how many parcels they could create off the top of his head.

Cross said it didn't appear to him that the application had changed. He asked Hagemeyer to walk him through the differences as staff's review had changed.

Hagemeyer said when he originally did the staff report he found out that Trumble Creek Road was in violation of the air quality act. He met with the applicant and their representative and found out it was in violation but it no longer is. We are mitigating with speed limits and the dust cop. That was pointed out by the applicant and that changed the way he looked at it. It wasn't relevant this time of review and they are providing the oil to the road and he felt it was important to address that in staff report.

Heim stated if they create five-acre parcels they would have to come back for subdivision review. But family transfers preclude subdivision.

Toavs commented it was in violation, is it proved it's out of that. How do we know it's not in violation?

Harris said the state sited county for three particular roads for dust violations. Then the county entered into an administrative order to do certain things to avoid the fine. We are not out of violation; we were cited for a particular day for a particular complaint. A complaint could come tomorrow in the same road. The county only negotiated a way out of paying a \$30,000 fine by agreeing to do a bunch of stuff. They put sign up and have a dust cop. Every gravel and dirt road in the county is a potential source of dust and a possible violation by the state except for probably during the winter. So we're not out of violation we were fined for a specific date and time.

Toavs said to say we were in violation now or not isn't accurate unless the road has been paved.

APPLICANT PRESENTATION

Erica Wirtala, Sands Surveying, Inc. represented the applicant. She spoke about the evaluation based on statutory criteria as outlined according to state regulations. She referenced in the staff report policy 42.2 and said she was not sure if staff was saying they are in compliance with that section or flying in the face of that. She said she would take the better of the two and say the property is in agricultural production, it's been used for hay, and there is no reason not to think it wouldn't continue. Five acre parcels would still allow those uses to continue. She thought that policy does comply and they are in compliance with the master plan. The second section she pointed out was policy 40.4. That one has also been shown not to be a problem in that area. She was not sure why that policy was brought into play. A SAG-5 is in compliance with that. The third policy is the road to protect public safety and allow safe travel and restrict development without adequate road improvements. They called the Flathead County Road and Bridge Department and their stance seemed to be the county entered into an agreement with DEQ they would do certain steps necessary to mitigate dust in the county. There are 800 miles of unpaved roads in Flathead County so paving could not be part of the mitigation plan submitted to state DEQ, but the measures they took satisfied DEQ and according to that department we are no longer in violation of that. Schlegel provided the last five years of receipts for dust abatement on that road. Typically when you live on a gravel road you have to work with your neighbors for dust abatement to keep dust down on roads. She spoke of the vehicle trips per day on Trumble Creek Road and lessening congestion in the streets. The Cuffe family has lived on this property 30+ yrs and would like their family to live there too. She spoke of family transfers and exemptions and the process an applicant would have to go through to do one. She also spoke about SE Rural Whitefish Zoning District and said it was a very contentious zoning district that was put in place. There were SAG-5 designations suggested within that district but those were overruled. It was a very close vote on that and rules actually changed mid-stream

by the state legislature as to how many people were needed to change a vote for a zoning district if you live within the district. It went from 45% to 55% so people that were in the district could not protest. The Cuffe's protested that zoning district on their property. It really has restricted a lot of property owners for development. She spoke of not oiling the roads year round. Typically you wait for the county grader so you're looking at late May or early June for dust abatement. There was a comment that since the zone change occurred there had been no new five acre tracts created. That's because you can't create a five acre parcel within that district because everything is SAG-10 and 20's. The property is fairly flat with no wild land or high fire rating. She spoke of the recommendation and the criteria and said it's tough to go forward with no recommendation from the staff. If you meet the majority of the criteria in the review and take into account that family transfers are highly regulated. If you have family members on that piece of property it becomes more affordable to mitigate. She spoke of sharing the burden of the cost of dust abatement on Trumble Creek Road, which is unimproved. She also spoke of density in the area and the character of the area. She felt they had compelling arguments to move forward with the zone change and they would like the board to consider that.

BOARD QUESTIONS

Heim asked how many parcels could be created by family transfers without having to go through board review.

Wirtala said the only exemption they could do would be a boundary line adjustment but because they only have one parcel they can't boundary line adjust unless they work something out with their neighbor. But the only exemptions you are allowed by state law are up and down on your family tree.

Heim asked if this could be split into fourths by family transfer without further review if it went to SAG-5.

Wirtala said they could do five acre increments. Family transfers are considered exemptions by state law. They do not undergo subdivision review so the planning board doesn't see family transfers. But the number and the legality is reviewed by planning staff and commissioners.

There was discussion regarding how many family transfers could go through 509 review for a tract of land.

APPLICANT PRESENTATION (CONTINUED)

Lynette Cuffe, 4546 Trumble Creek Road, stated she agrees with the ideas of zoning and land use. We all have opinions about that. They have lived on their property for 30 years, her parents owned it prior to that. It was originally 40 acres. They had always intended to someday give their children some property to live on. When the property was zoned in 1996, they were not aware of it. They would have probably done a family transfer back then or before then. They

want to give land to them and the intention was to give them a smaller than five acre parcel but they are zoned. They don't want to give them ten acres and can't even break it into two twenties because they don't own 40 acres. They had to apply for a zone change to SAG-5 with the intention that the kids would have to pay for expenses incurred to improve it. It would be the back part of the property, farthest from the road. She spoke of dust issue and how they do dust abatement every year. They all work together to comply with dust abatement. They are not going to subdivide their land. The use is not going to change. The road is already in place. She pointed it out on the map. She spoke about the road trips and said the usage isn't going to change. She hopes they vote for approval.

Lindsay Cuffe, 4546 Trumble Creek Road, agreed with her mother. She wanted to reassure the board that she and her brother want to have homes on the back part of the property; one day build they would build a dream home and raise their family and grow up in the same environment that they did.

Kelly Cuffe, 1249 4th Street West, stated it's an emotional situation and their future and she asked the board to weigh their decision heavily. This is their dream.

**AGENCY
COMMENT**

None.

**PUBLIC
COMMENT**

Paul Adkinson, 4482 Trumble Creek Road, owns the property just south of Cuffe's fence line. The easement to go back to that piece of property goes through his property and he has no problem with that. He spoke of traffic and oiling Trumble Creek Road. He has lived there 24 years and they are very good neighbors. He spoke of other land divisions in the area. He doesn't see a problem with giving their children five acres each. As far as the dust there are too many what-ifs. The road dust for two more families should not be a problem. He hoped the planning board approves the zone change because they are not trying to subdivide, they are trying to give their kids a piece of their heritage.

Mike Copell, 4490 Trumble Creek Road, was in full support of the project. He stated this proposal conforms to the existing land use nicely. He didn't think this would not conform to the existing characteristics of the neighborhood. He felt this was smart growth, adding a little density close to a vehicle artery here in the county. Along Highway 40 it makes sense to cluster homes closer to that. That would actually help alleviate some of the road dust issues. He felt that being a native Montanan represented a lot of institutional knowledge and that is valuable. He was in full support of the project.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

Hagemeier stated that first of all, Wirtala indicated that staff is saying five acre parcels are not acceptable under roads. That is not what we are saying. We are saying that the county approving an increase in density that could possibly create dust related issues is not appropriate. The increase in density and the county approving it, that causes a dust related issue and would be against the growth policy. It's not the size of the parcel it's the increase in density. So there isn't going to be a mandate on county roads that are gravel that zone changes shouldn't occur for five acres. The second part is about 509 and the exemption review. His job, being on the 509 committee, was to take patterns of development in front of the commissioners. It's true on lots greater than 20 acres if four or more exemptions were created in 20 years that would be considered a pattern under the 509 resolution. However, the commissioners have never denied anybody their family transfer. We have statistics in the planning office that shows over 50 percent of family transfers in Flathead County are abuse. They end up being transferred out of ownership. The fact of the matter is once four parcels are created all that happens is it triggers a review to go to the commissioners. Seven parcels can be created out of this, it can happen. After four are created, those next three will go in front of the commissioners. They have to have a really strong reason to say these people are going to abuse the 509. It's not very restrictive it's only avoiding subdivision review.

**MOTION TO
ADOPT F.O.F.**

Pitman made a motion seconded by Hall to adopt staff report FZC-08-03 as findings-of-fact.

**BOARD
DISCUSSION**

Cross stated that he wanted certain things from the first staff report that he wanted to get into this current staff report. Specifically he wanted a picture of the whole district and the traffic report/table.

Staff said that could be done. Staff would not change the staff report but the information he wants included would be attached to the transmittal letter.

Dziza asked about the lots to the south. He stated it looked like smaller lots heading out towards Highway 40. It seemed to him that zoning that SAG-20 they didn't consider current land uses. He asked how staff would characterize this, five acre parcels, as far as conforming to area land use.

Hagemeier said if you ignored the zoning and just looked at the land use, five acre parcels would be very similar to a lot of the properties in the surrounding area at least to the east and the south.

Harris stated it's important to note if you look at the patterns on the map, the area that is zoned is intact. The area that is unzoned jumps out at you as being kind of a mess. This is due to family transfers and some boundary line adjustments. It's difficult to do an area wide characterization. We also have to be aware that the area outside the

zoning is a real hodgepodge. You would be looking at a bunch of exemptions without any rhyme or reason to a road system. There is little or no planning. It just makes it that much more difficult to characterize those in relation to the uniformity of the area that is zoned.

MOTION
(Add a sentence to
F.O.F #3)

Dziza made a motion seconded by Hall to add a sentence to Finding-of-Fact #3: *The proposed zone change is in general compliance with the surrounding area land use.*

BOARD
DISCUSSION

The board discussed the area land use.

Hagemeier stated from a planner's prospective we wouldn't want unzoned areas to influence zoned areas in terms of land use.

Pitman commented that it looked obvious to him. When he says 'area', it would be well around the subject property; throughout that SAG-10. He looks at everything.

The board discussed the motion and the wording.

ROLL CALL
(Add sentence to
F.O.F #3)

On a roll call vote the motion passed unanimously. (6-0)

ROLL CALL
TO ADOPT F.O.F.

On a roll call vote the motion passed unanimously. (6-0)

MOTION TO
APPROVE

Heim made a motion seconded by Hall to adopt Staff Report FZC-08-03 and recommended approval as conditioned.

BOARD
DISCUSSION

Dziza commented that what was really bothering him was what does the board tell the next guy that comes in up the road. He understood what the family was doing and supports them. But what does he tell the guy to the north of them and so on?

Cross commented that he drives that road a fair amount and he agreed with the Cuffe's about the oiling of the road, it's been that way for a long time. He had a real problem with introducing SAG-5 in a zone that doesn't have any of it anywhere. He could support SAG-10 because it extends over and makes more sense. It leaves the integrity of the zoning district intact. It might be more than they want to give to their children but at this point they can't do anything else with it. He spoke of the dust problem and stated it is clearly one of the areas that created a huge amount of dust. When the guy from DEQ came out he stated the dust from Trumble Creek Road and Conn Road was visible from the top of trees one half mile away. Water made no significant difference. This severely impacts the neighbors on either side of the road; there is a real problem out there. He felt it was somewhat irresponsible to introduce a completely new zoning designation in a district that doesn't have it and in essence quadruples the permitted

density on a property. He was really sympathetic to the Cuffes' and what they want to do. But he thought going SAG-10 was a lot more defensible because it is adjacent to a SAG-10 and there is SAG-10 sprinkled throughout the whole district. He would support an amendment that would change it from SAG-5 to SAG-10. He reiterated that it is irresponsible to the county not to the people that want to do what they want to do. He didn't see how the county could say it would support that zone change to that intensity even though five acres isn't all that intense.

Harris said if the board is moving that way, they could do the amendment or deny the application and make another motion to support an amendment.

Heim asked what happens with this process if the board changes the zone.

Cross said it was his understanding that if the board had an amendment to make it SAG-10, then they would forward a recommendation to the commissioners that would say the board approved the amended request to change it from an AG-20 to SAG-10. But the original request would still be for SAG-5. The commissioners would get the planning boards' recommendations and they would make their own decision.

Hall said with these thoughts in mind, the board can't go ahead and re-write the application to say, sure on the west end of your property you can have SAG-5 but on the east portion it's all SAG-10. We can't make that recommendation to the commissioners can we?

Cross said frankly, the board can do anything they want. The problem is if you start going down that road then every time anybody brings in a piece of property you're going to end up with pieces.

Hall said that even so, that would dissolve the boards' mental dilemmas they are having over the potential scenario that is being presented. If that portion to west became SAG-5 and then the remainder became SAG-10 then wouldn't everybody in essence be happy? She didn't know how the board would go about implementing that structure.

Harris stated it is certainly possible. The board can do what they want. He didn't think staff would think it's a very good idea.

Board discussed the fact that they didn't apply for SAG-10 they applied for SAG-5 and the applicants have very valid explanations as

to what they want to do. They discussed the options.

MOTION
(Amend the main motion)

Dziza made a motion seconded by Toavs to amend the main motion to recommend approval of the proposal as a SAG-10.

BOARD DISCUSSION

Heim said he would probably vote against it because they didn't apply for that and if the board starts doing this everything that comes in that would be seen by us they'll think we'll change it to whatever we think it should be. He would vote against this same thing even if it were 40 or 80 acres farther to the north because it's not surrounded by little one-acre lots. He knows they are not supposed to consider the unzoned territory but that's reality.

Toavs said you have to draw a line somewhere. You have zoning for a reason. He agreed with staff saying you can't let the unzoned areas dictate how far they keep creeping into the zoned areas. It's plain as day where the zoning is on the map and where it's not. Using that as criteria you also still have the possibility of doing a PUD.

Hall said that you have an unpaved road and you probably aren't going to do a PUD on an unpaved road.

Toavs said that it is still a possibility. That's worst case scenario.

The board discussed the zoning in the area and referenced the map in the staff report.

ROLL CALL
(Amend the main motion)

On a roll call vote the motion passed 4-2 with Hall and Heim dissenting.

MAIN MOTION ROLL CALL

On a roll call vote the motion passed 4-2 with Heim and Hall dissenting.

OLD BUSINESS

Cross spoke about setting up committees and sending a letter to the commissioners.

Cross made a motion seconded by Pitman to forward a letter to the Board of County Commissioners stating they wanted to set up two sub-committees to help planning staff move forward with projects to help with the implementation of the growth policy.

The board and staff discussed at great length the subcommittees, which board members would be on the committees and if they should have members from the community on each committee.

The motion carried by quorum.

Dziza, Toavs, DeKort, Hickey-AuClaire and Heim would be on Committee A. (mapping)

Mower, Hall, Pitman and Cross would be on committee B.

Cross spoke of the Whitefish City-County Planning Board and the county members being without a position. He suggested those members could form the first land use advisory committee for that area around Whitefish.

Harris said Commissioner Hall thought that was a pretty good idea. The discussions with Whitefish haven't even started yet. For whatever reason, Whitefish has been reluctant to come to the county's table. It appears there is kind of a change of heart and things are starting to loosen up a little bit. One of the talking points on the table is what to do with the city-county planning board. The idea is if there is an application within that area, it would go to the city-county planning board and then come to the commissioners as opposed to going to the city council. Those things need to be worked through.

NEW BUSINESS

Harris spoke of a lawsuit the county lost and now has to pay attorney fees. This was a clear breach of process and ignoring the subdivision regulations. He has been directed to send a memo to all surveyors, engineers and subdivision representatives saying that we are going strictly by the rules and regulations. He went into detail for the planning board regarding what the lawsuit involved.

ADJOURNMENT

The meeting was adjourned at 9:10 p.m. on a motion by Heim. The next regular meeting will be held at 6:00 p.m. on August 13, 2008.

Gordon Cross, President

Mary Sevier, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 9/10/08